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No. 83-401

In the Supreme Court of the United States

OCTOBER TERM, 1983

A.E. STALEY MANUFACTURING COMPANY, PETITIONER

v.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT

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TABLE OF AUTHORITIES

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Statute:

Civil Rights Act of 1964, Title VII,
42 U.S.C. (& Supp. V) 2000e *et seq.* :

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Petitioner contends that a charge of unlawful employment discrimination filed by a Commissioner of the Equal Employment Opportunity Commission under Sections 706(b) and 707(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(b) and 2000e-6(e), must set forth the detailed factual basis for the allegations of discrimination contained in the charge.

1. On October 6, 1980, Daniel Leach, then a Commissioner of the Equal Employment Opportunity Commission, issued a sworn commissioner's charge pursuant to Sections 706(b) and 707(e) of Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e-5(b) and 2000e-6(e), alleging unlawful employment practices at petitioner's Decatur, Illinois, facility (Pet. App. 2a-3a & n.1, 20a-22a). The charge arose out of the Commission's systemic charge processing program. Commissioner Leach alleged that he had reason to

believe that, at least since July 2, 1965, petitioner had refused to hire blacks and women for all blue collar positions and had excluded them from those positions; had failed to provide blacks and women with equal opportunities for promotion, assignment and training; had terminated women at a disproportionate rate; and had maintained discriminatory terms and conditions of employment, to the detriment of blacks and women. The charge and its accompanying notice were duly served on petitioner, along with a request for employment information relevant to the charge (Pet. App. 2a-3a n.1, 39a). Petitioner refused to provide any of the requested documents, and demanded that the Commission provide the factual basis for the charge (Pet. App. 3a-4a, 23a-24a). On February 17, 1981, the Commission issued a subpoena duces tecum to obtain employment-related data for the period January 1, 1978, to the present (Pet. App. 4a, 26a-35a). On December 28, 1981, following petitioner's continued refusal to provide the information necessary for an investigation of Commissioner Leach's charge, the Commission brought this subpoena enforcement action in the United States District Court for the Northern District of Illinois (Pet. App. 4a, 66a).

The district court enforced the Commissioner's subpoena, rejecting petitioner's argument that the charge underlying the subpoena was invalid. The district court held that the charge adequately set forth the date, place and circumstances of the alleged discriminatory conduct and found that, because the charge was sworn, Commissioner Leach's good faith was presumed (Pet. App. 4a, 79a). The court concluded that the material requested by the EEOC was material, relevant, and not unduly burdensome for petitioner to produce, and it therefore ordered petitioner to comply with the subpoena (*id.* at 4a-5a, 79a-80a).

The court of appeals affirmed (Pet. App. 1a-18a). It concluded that a Commissioner's charge need not set forth a detailed factual basis because such a requirement would, in effect, compel the agency to demonstrate that it had reasonable cause to believe that a violation of the Act had occurred before it could conduct its investigation to determine whether such cause in fact existed (Pet. App. 7a-12a). See 42 U.S.C. 2000e-5(b). The court of appeals further held that the "date" requirement of Section 706(b) was met by the inclusion of July 2, 1965, in the charge. Because the EEOC may be uncertain of the temporal scope of the alleged unlawful employment practices at the outset of its administrative process, the court concluded that a good faith estimate of the time periods involved in the alleged discriminatory conduct satisfied the notice requirements of Section 706(b). That requirement was met here, the court noted, because the July 2, 1965, date was included in the charge under oath, and the good faith presumption arising from the oath was not overcome by the "bare, unsupported allegations of [petitioner's] counsel that the EEOC had a policy of inserting *pro forma* the effective date of the Act." Pet. App. 13a.

Finally, the court rejected petitioner's contention that the Commission's investigation should be halted because petitioner's actions were protected by a bona fide seniority system and the Commission could not prove that the alleged discriminatory acts had continued to within 180 days of Commissioner Leach's charge (Pet. App. 14a-15a). 42 U.S.C. 2000e-8(a). Recognizing that these arguments were nothing more than defenses on the merits, the court held that (Pet. App. 14a):

> the mere assertion by an employer that his employment practices are lawful does not deprive the EEOC of jurisdiction. No action would ever be brought against an employer if the jurisdiction of the EEOC depended

upon the assertions of employers as to whether their own employment practices were lawful.

2. As petitioner correctly observes (Pet. 8), this case and *EEOC* v. *Shell Oil Co.*, No. 82-825, on which oral argument has been heard by this Court (Oct. 31, 1983), "present opposite sides of the same coin." In both cases the issue is whether, before obtaining enforcement of an administrative subpoena, the EEOC must plead the factual basis for the date, place and circumstances of the discrimination alleged in the underlying Commissioner's charge. Accordingly, the Court should hold this case pending its decision in *Shell Oil*.

Respectfully submitted.

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